



## Local Rule 7056-1 Summary Judgment (2013)

**(a) Summary Judgment Motions and Memoranda.** This rule applies to motions for summary judgment in contested matters under [Fed. R. Bankr. P. 9014](#) [1] and adversary proceedings. A motion for summary judgment and the supporting memorandum must be clearly identified in the case caption and introduction.

**(b) Motion: Form, Elements and Undisputed Material Facts; and Background Facts Statement.** The movant must file the motion for summary judgment in compliance with [Local Rule 5005-2](#) [2] within any applicable time limitation, unless the court orders otherwise. The motion and any supporting memorandum must be contained in one document. A motion for summary judgment must include the following sections:

- (1) An introduction summarizing why summary judgment should be granted;
- (2) A section entitled "Statement of Elements and Undisputed Material Facts" that contains the following:
  - (a) Each legal element required to prevail on the motion;
  - (b) Citation to legal authority supporting each stated element (without argument);
  - (c) Under each element, a concise statement of the material facts necessary to meet that element as to which the moving party contends no genuine issue exists. Only those facts that entitle the moving party to judgment as a matter of law should be included in this section. Each asserted fact must be presented in an individually numbered paragraph that cites with particularity the evidence in the record supporting each factual assertion (e.g., deposition transcript, affidavit, declaration, and other documents).
- (3) An argument section explaining why, under the applicable legal principles the asserted undisputed facts entitle the party to summary judgment. The motion may, but need not, include a separate background section that contains a concise statement of facts, whether disputed or not, for the limited purpose of providing background and context for the case, dispute, and motion. This section may follow the introduction and may, but need not, cite to evidentiary support. The memorandum may also provide a concise conclusion.

**(c) Notice of the Motion and Hearing.** The movant shall obtain and set an appropriate hearing date with the court scheduling clerk. A Notice of Summary Judgment Motion and Notice of Hearing shall be filed in compliance with [Local Rule 5005-2](#) [2]. A Notice of Summary Judgment Motion and Notice of Hearing shall;

- (1) be in substantial conformity with [Local Bankruptcy Form 9013-1](#) [3], with alterations as may be appropriate to comply with these Local Rules;
- (2) state a specific objection deadline that is at least 21 days after service of the Notice of Summary Judgment Motion and Notice of Hearing.

**(d) Memorandum in Opposition; Response to Elements and Facts; and Background Facts.** A party filing a memorandum in opposition to a motion for summary judgment must file its opposition in compliance with [Local Rule 5005-2](#) [2] by the date stated in the Notice of Summary Judgment and Notice of Hearing. A memorandum in opposition to a motion for summary judgment must include the following sections:



- (1) An introduction summarizing why summary judgment should be denied;
  - (2) A section entitled "Response to Statement of Elements and Undisputed Material Facts" that contains the following:
    - (a) A concise response to each legal element stated by the moving party. If the non-moving party agrees with a stated element, state "agreed" for that element. If the party disagrees with a stated element, state what the party believes is the correct element and provide citation to legal authority supporting the party's contention (without argument). If the non-moving party agrees that any stated element has been met, so state.
    - (b) A response to each stated material fact. Under each element that a party disputes as having been met, restate each numbered paragraph from the statement of material facts provided in support of that element in the motion. If a fact is undisputed, so state. If a fact is disputed, so state and concisely describe and cite with particularity the evidence on which the non-moving party relies to dispute that fact (without legal argument).
    - (c) A statement of any additional material facts, if applicable. If additional material facts are relevant to show that an element has not been met or that there is a genuine issue for trial, state each such fact separately in an individually numbered paragraph that cites with particularity the evidence in the record supporting each factual assertion (e.g., deposition transcript, affidavit, declaration, and other documents).
    - (d) A statement of additional elements and material facts, if applicable. If there are additional legal elements not stated by the moving party that the non-moving party contends preclude summary judgment, state each such element along with citation to legal authority that supports the element (without argument) and any additional material facts that create a genuine issue for trial on these elements. Each additional asserted fact must be presented in an individually numbered paragraph that cites with particularity the evidence in the record supporting each factual assertion (e.g., deposition transcript, affidavit, declaration, and other documents).
  - (3) An argument section explaining why under the applicable legal principles, summary judgment should be denied. The memorandum in opposition may, but need not, include a separate background section that contains a concise statement of facts, whether disputed or not, for the limited purpose of providing background and context for the case, dispute, and motion. This section may follow the introduction and may, but need not, cite to evidentiary support. The memorandum may also provide a concise conclusion.
- (e) Reply Memorandum.** The moving party may file a reply memorandum no later than 7 days after the objection is served and in no case less than 4 days before the date set for hearing. In the reply, a moving party may only cite additional evidence not previously cited in the opening memorandum to rebut a claim that a material fact is in dispute. Otherwise, no additional evidence may be cited in the reply memorandum, and if cited, the court will disregard it.
- (f) A Motion May Not Be Made in a Response or Reply Memorandum.** No motion may be included in a memorandum in opposition or reply memorandum. Such a motion must be made in a separate document.
- (g) Length of Motion, Memorandum in Opposition, and Reply Memorandum.** A motion for summary judgment or a memorandum opposing a motion for summary judgment must not exceed 25 pages in length, exclusive of face sheet, table of contents, statements of issues and facts, and exhibits. A reply memorandum must not exceed 10 pages, exclusive of face sheet, table of contents, statements of issues and facts, and exhibits.
- (h) Overlength Memoranda.** An order of the court must be obtained to file a motion or memorandum



that exceeds the page limitations set forth in subsection (g) of this rule. Such a motion may be made to the court ex parte, and must include a statement of why additional pages are needed and the number of pages. The court will approve the request only for good cause shown. If authorized, an overlength memorandum must contain, in addition to the elements and sections otherwise required by this rule, a table of contents, with page references, setting forth the titles or headings of each section and subsection;

**(i) Citations of Unpublished Decisions.** A memorandum may cite an unpublished decision from this district, but only if the decision is furnished to the court and parties when the memorandum is filed. Unpublished opinions from other districts may not be cited as authority. Unpublished decisions of this court should be cited as follows: Smith v. Jones (In re Smith), Ch. 7 Case No. 93B-22404, Adv. No. 94PC-2302, slip op. at 10 (Bankr. D. Ut. March 1, 1995). The clerk maintains an index and copies of selected, unpublished opinions from this district.

**(j) Citations of Supplemental Authority.** When pertinent and significant authorities come to the attention of a party after a memorandum has been filed, or after oral argument but before the court renders a decision, a party may advise the court by letter, with a copy to all parties, setting forth the citations. The letter must, without argument, state the reason for the supplemental citations and include a reference either to the page of the memorandum or to a point argued orally to which the citations pertain. Any response must be promptly made and similarly limited.

**(k) Supporting Exhibits to Memoranda.** All evidence offered in support of or opposition to motions for summary judgment must be submitted in a separately filed appendix with a cover page index. The index must list each exhibit by number, include a description or title and, if the exhibit is a document, provide the source of the document. A responding party may object as provided in [Fed. R. Civ. P. 56\(c\)\(2\)](#) [4]. Upon failure of any responding party to object the court may assume for purposes of summary judgment only that the evidence proffered would be admissible at trial.

**(l) Certificate of Service.** Unless otherwise ordered, a party must file a certificate of service of the Summary Judgment Motion, the Notice of Summary Judgment Motion and Notice of Hearing and all subsequent pleadings. The certificate must be filed with the motion and notice, endorsed upon the motion, notice and subsequent pleading, or filed separately as soon as possible and in any event before any action based upon the service is requested or taken by the court. The certificate must be in substantial conformity with [Local Bankruptcy Form 9013-3](#) [5].

**(m) Failure to Respond.** Failure to respond timely to a motion for summary judgment may result in the court's granting the motion without further notice.

**(n) Granting Relief Without a Hearing.** The court may, but is not required to, strike the hearing and grant the relief requested in a motion for summary judgment without a hearing if there has been no memorandum in opposition to the motion filed or served on the movant. The court may, but is not required to, strike the hearing and enter an order disposing of the summary judgment motion if the court determines that oral argument is not necessary or helpful.

**(o) Time for Striking Hearings.** A request to strike a hearing should be made at least two business days prior to the hearing.

## COMMENT

This rule sets forth procedures specific to motions for summary judgment in contested matters and adversary proceedings. The rule adopts the procedures of the U.S. District Court of Utah but clarifies that notice of a summary judgment motion and an objection deadline must be served on adverse parties. The purpose of the Statement of Elements and Undisputed Material Facts and the corresponding section in the memorandum in opposition to a motion for summary judgment is to distill the relevant legal issues and material facts for the court while reserving arguments for the respective argument



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sections of the motion and opposition memorandum.

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### Links

- [1] [https://www.law.cornell.edu/rules/frbp/rule\\_9014](https://www.law.cornell.edu/rules/frbp/rule_9014)
- [2] <https://www.utb.uscourts.gov/local-rules/2013/5005/2>
- [3] <https://www.utb.uscourts.gov/forms/notice-hearing-template>
- [4] [https://www.law.cornell.edu/rules/frcp/rule\\_56](https://www.law.cornell.edu/rules/frcp/rule_56)
- [5] <https://www.utb.uscourts.gov/forms/certificate-service-template>